

IN THE MATTER OF A MEDIATION/ARBITRATION  
AND IN THE MATTER OF POLICY GRIEVANCES FILED BY  
THE BRANDON UNIVERSITY FACULTY ASSOCIATION  
DATED MARCH 15, 2006 AND JULY 25, 2007

BETWEEN:

BRANDON UNIVERSITY FACULTY ASSOCIATION

(hereinafter referred to as the "BUFA"),

- and -

BRANDON UNIVERSITY

(hereinafter referred to as the "University").

## **AWARD**

### MEDIATOR/ARBITRATOR

A. Blair Graham, Q.C.

### APPEARANCES

Kathy McIlroy - On behalf of BUFA

Grant Mitchell, Q.C. - On behalf of Brandon University

# **AWARD**

## **INTRODUCTION**

In December, 2008, I was appointed by the Brandon University Faculty Association (BUFA) and Brandon University (the University) as an arbitrator with respect to two policy grievances dated March 15, 2006 and July 25, 2007. Both policy grievances related to the First Nations and Aboriginal Counselling program (the FNAC program). Following my appointment as arbitrator, arrangements were made for the arbitration to proceed commencing on June 16, 2009 in Brandon, Manitoba.

Prior to the arbitration, the parties, through their counsel, provided me with several documents including copies of the two policy grievances and a report to the President of the University from Dr. Shirley Katz dated July 24, 2007.

Both policy grievances allege violations of Articles 2 (Management Rights), 4 (No Discrimination) and 5 (Academic Freedom) of the Collective Agreement. The policy grievance dated July 25, 2007, which is substantially similar to the policy grievance of March 15, 2006, defines the nature of the grievance as follows:

The Employer has fostered, and allowed to continue, an environment of disrespectful and patronizing behavior with regard to those involved in the First Nations and Aboriginal Counseling Degree Program. The staff and guest lecturers in the First Nations and Aboriginal Counseling Degree Program are treated differently than in any of the other facilities at the University.

Dr. Katz had been commissioned by the University to investigate and provide a report with respect to allegations of discrimination and harassment and other related complaints which had been made by the former Director of the FNAC program,

and to investigate the BUFA policy grievance of March 15, 2006 (the July 25, 2007 policy grievance had not been filed at the time Dr. Katz was engaged).

Dr. Katz's report dated July 24, 2007 is an impressive document. It is thorough and detailed and summarizes her investigation, provides a persuasive analysis, and makes specific findings and recommendations. The report specifically rejects many of the former Director's complaints, but also identifies errors and problems which were made by the University in dealing with the former Director of the FNAC program.

Immediately prior to the commencement of the arbitration hearing, I was asked by the parties to consider converting the arbitration proceedings into a mediation/arbitration proceeding. It was proposed that pursuant to such a process, I would assist the parties in attempting to reach a settlement of some or all of the issues arising from, or related to the two policy grievances. However, I would do so on the express understanding that if any issues were not resolved by agreement, I would retain my authority and jurisdiction to resolve the outstanding issues by the granting of remedial orders, acting as an arbitrator pursuant to the grievance arbitration provisions in the Collective Agreement between the parties, and Part VII of the *Labour Relations Act*, C.C.S.M.

After discussing the proposed mediation/arbitration process with counsel for the parties, it was agreed that the arbitration proceedings would be converted into a mediation/arbitration process as described in the immediately preceding paragraph. It was also agreed that with respect to any issues not resolved by agreement between the parties, I would grant any remedial orders necessary as an arbitrator, on the basis of the information, documentation, and submissions provided to me by the parties and their counsel during the mediation portion of the proceedings, without hearing or receiving any further evidence on any of the unresolved issues.

In inviting me to exercise my remedial authority as an arbitrator, the parties, through their counsel, were acknowledging that the policy grievances raised issues relating to the violation, misinterpretation, or misapplication of articles in the Collective Agreement, including Articles 2, 4 and 5 of the Collective Agreement. The parties were also acknowledging that in order to resolve the real substance of the matters in dispute, it might be necessary for me to exercise my remedial authority as an arbitrator pursuant to Section 121(1) of the *Labour Relations Act*, C.C.S.M.

The mediation portion of the proceedings commenced on June 16<sup>th</sup> in Brandon, and continued on June 17 and 23, 2009. Many issues were discussed by the parties. Those issues were organized into seven general categories, many of which involved multiple issues. Those seven categories were:

1. Declaratory Relief;
2. The Respectful Environment Policy;
3. The Advisory Committee;
4. Joint meetings;
5. FNAC;
6. The Ceremony Room;
7. Education.

Agreements were reached on some issues. Some progress was made in resolving the parties' differences on other issues. However, there were other issues which remained contentious.

On the afternoon of June 23<sup>rd</sup>, I was asked by the parties to prepare a memorandum summarizing the issues on which the parties had reached agreement, and to identify the issues which remained contentious. I was also invited to summarize

the issues on which progress had been made towards resolving the parties' differences, and to suggest a basis upon which the parties might fully resolve those differences.

Accordingly, I provided a document to the parties dated July 10, 2009 which I referred to as a Preliminary Memorandum, which is attached hereto and marked as Appendix "A" to this arbitration Award. After receiving the Preliminary Memorandum, the parties agreed that they would make further submissions on the unresolved issues. They did so by way of e-mails from their respective counsel, one from each counsel on July 27<sup>th</sup>, and one from each counsel on July 29<sup>th</sup>. I received a further e-mail from counsel for the University on August 10, 2009 (replying to certain questions I had posed on August 5<sup>th</sup>). A final conference call took place with the parties on August 11, 2009.

I have carefully considered the information and documentation provided to me during the mediation portion of the process, the submissions which were made in Brandon, and in the subsequent e-mails from counsel. I am setting forth herein a summary of the issues on which the parties have reached agreement as well as my decision on the issues which the parties have been unable to resolve by agreement. I am also granting certain remedial orders with respect to some of the issues, as more particularly outlined at the conclusion of this Award, pursuant to my authority as an arbitrator under the grievance arbitration provisions in the Collective Agreement between the parties, and Part VII of the *Labour Relations Act*, C.C.S.M. The parties have specifically agreed that Article 6.18 of the current Collective Agreement, and any equivalent articles in any predecessor collective agreements, have no application to these proceedings, and that I have the authority and jurisdiction to make the decisions and to grant the remedial orders referred to herein, notwithstanding Article 6.18 of the current Collective Agreement, or any equivalent articles in any predecessor collective agreements.

This Award is organized on the basis of the seven general categories listed above.

**1. DECLARATORY RELIEF**

I decline to grant a declaration that the University allowed a poisoned work environment to exist in the FNAC program, or that the University failed to alleviate the problems that existed in the FNAC program.

The fact that serious problems had arisen with the program, and that some of those problems persist, has been recognized by both the University and BUFA. However, I lack the necessary evidentiary foundation to make the specific declarations sought by BUFA. Furthermore, I do not think it is either appropriate, or useful to grant the declaratory relief sought by BUFA in order to address and resolve any of the issues which have been identified by the parties.

**2. THE RESPECTFUL ENVIRONMENT POLICY**

**General Comments**

The Respectful Environment Policy (the Policy) is a policy of the University. It was approved by the Board of Governors on April 24, 2008, and implemented on September 1, 2008. The Policy was the subject of extensive discussion during the proceedings in Brandon, and was also an important topic in the communications which occurred thereafter. A copy of the Policy in its present form is attached as Appendix "B" to this arbitration Award.

Both the University and BUFA acknowledge that some changes to the Policy are required. The University and BUFA are in general agreement with respect to

a few changes which are required to the Policy, but disagree with respect to the nature and extent of any other changes which may be required.

Any changes to the Policy must be approved by the Board of Governors of the University before coming into effect. The University asserts that before any recommendations for changes to the Policy are presented to the Board of Governors for approval, widespread consultation must take place with:

- i) all unions with which the University has collective agreements, including but not limited to BUFA;
- ii) the administration of the University;
- iii) the students of the University, through the Brandon University Students' Union.

BUFA recognizes that consensual changes to the Policy require the approval of the Board of Governors of the University, but is concerned that the consultative process contemplated by the University will be time consuming and will unduly delay the implementation of necessary changes to the Policy.

On a practical basis, I am disinclined to "order" changes to an important policy of the University, which affects the interests of other unions and groups, including students, who are not parties to these proceedings. Moreover, I have serious reservations about my jurisdiction as an arbitrator to order changes to the Policy, in the context of these proceedings.

Accordingly, with respect to the Policy, (unlike most of the other categories referred to in this Award), I will restrict myself to making recommendations to the parties

based on my understanding of the way the current Policy operates, and the extensive submissions made to me by both parties. Given the time that was spent on discussions about the Policy in these proceedings, I hope that my recommendations will be given serious consideration by the parties.

All of the changes to the Policy which are referred to hereunder (including the changes to which the parties have agreed, and the changes which I am recommending), will require approval through the "Process" described in a separate subsection of this Award (the Process for Amendments to the Policy).

Pursuant to the Process, the parties may also be able to agree on other changes to the Policy, or to modify my recommendations by agreement.

BUFA's concerns about changes to the Policy being implemented quickly are legitimate. Accordingly, it is also my hope that the timeframes referred to in the Process will be respected.

### **Specific Changes to the Policy**

#### **A Preamble to the Policy- Article 2**

Article 2 of the Policy is generally entitled "Policy". It consists of two parts: Article 2.1 is entitled "Purpose of Policy", and Article 2.2 is entitled "Policy Statement". In many respects, Article 2 in its entirety, is similar to a preamble which sets forth various principles which are intended to assist in the interpretation of the Policy, and in its actual administration. One of the changes to the Policy which the parties have agreed upon, and another change which I am recommending, will involve additions or revisions to Article 2 of the Policy. I believe that Article 2 of the Policy with the changes referred to in

this Award can effectively function as a preamble, setting forth principles which will assist in both the interpretation and administration of the Policy.

Matters Agreed Upon

Certain changes to the Policy have been agreed upon by the University and BUFA (subject to being approved pursuant to the Process). They are as follows:

- a) The University and BUFA agree that there should be a statement included in the Policy with respect to academic freedom. There is agreement that the statement should be:

In administering this Policy, Conflict Resolution Committee members, the Conflict Resolution Advisors and Investigators, like all other officers of the University, are obliged to uphold academic freedom and freedom of expression and association, while recognizing that some limits apply to the exercise of academic freedom and freedom of expression and association.

The parties also agree to the inclusion of the above-noted statement in a preamble to the Policy. Accordingly, because I believe Article 2 can effectively function as a preamble, I recommend that the statement be included as Article 2.2(g) of the Policy.

Notwithstanding the inclusion of the above-noted statement with respect to academic freedom and freedom of expression in Article 2 of the Policy, the reference to academic freedom and freedom of expression in Article 3.6(d) of the Policy should remain.

- b) The University and BUFA have agreed to amend Article 3.4.4(c)(iv) to allow for meaningful representation. There is agreement between the parties that the last sentence of Article 3.4.4(c)(iv) will be deleted and replaced with the following sentence:

The investigator will inform the complainant and the respondent that they may have union representation and/or legal counsel, at their own expense, should they choose to participate in the interview/investigation process.

### Matters in Dispute

When I was preparing the Preliminary Memorandum, I thought that there were substantially more issues relating to the Policy than those outlined in a) and b) in the preceding subsection of this Award, on which the parties had agreed, or were close to agreement. However, following a review of the parties' responses to the Preliminary Memorandum, it became clear that there was no specific agreement between the parties on any other issues relating to the Policy. On some issues, there was consensus on broad points of principle, but disagreements between the parties on points of detail. On other issues, the parties were deeply divided.

Accordingly, I will outline in this Award the points of disagreement, undertake an analysis of the contentious issues, articulate my position as to whether or not changes to the Policy are warranted, and provide my specific recommendations for changes to the Policy.

The issues with respect to the Policy which remain in dispute between the parties are outlined below. I am departing from the sequence of the issues in dispute as they were outlined in the Preliminary Memorandum in order to deal with the articles in the Policy in their approximate sequential order.

- a) *Incidental issues relating to Academic freedom - Article 2, and Articles 1(f)(3) and 3.4.2(b)*

In addition to the statement with respect to academic freedom to be included in Article 2, BUFA also seeks to have references to academic freedom included in two specific articles in the Policy (Article 1(f)(iii) which provides certain examples of what is not personal harassment, and Article 3.4.2(b) dealing with special arrangements being implemented in certain cases for complainants involved in an informal resolution of a complaint).

The University says that such changes to those two articles are unnecessary, particularly if Academic freedom will be referred to in Article 2 of the Policy and becomes a principle in interpreting and administering the Policy. The University has also expressed a concern that if academic freedom is specifically mentioned in relation to some, but not all matters referred to in the Policy, a mistaken impression could arise that Academic freedom is more important with respect to some matters than with respect to others.

I agree with the University's position and accordingly, I am not recommending that references to Academic freedom be included in either Article 1(f)(iii) or Article 3.4.2.(b).

- b) *Matters within the jurisdiction of the Senate of the University (the Senate) - Article 2*

BUFA and the University agree that the Policy should contain a statement to the effect that there are certain matters which are within the exclusive jurisdiction of the Senate and that those matters will continue to be dealt with pursuant to the Senate's policies and procedures, and will not fall within the scope of the Policy.

The University has correctly pointed out that there could be cases which fall within the jurisdiction of the Senate and under the Policy, such as where there is an allegation that a student's marks were linked to a student providing sexual favours. In other words, there may be cases involving joint or parallel jurisdiction.

The parties were unable to reach agreement on the wording of the statement that certain matters are within the jurisdiction of the Senate.

I think both the University and BUFA recognize and understand that cases of joint or parallel jurisdiction may arise. In my view, it would be helpful to refer to that possibility in the Policy. However, it would be unhelpful and potentially problematic to include a statement in the Policy purporting to definitively determine all jurisdictional issues. In cases involving arguments relating to joint or parallel jurisdiction, it will ultimately be for the protagonists to identify and sort out such jurisdictional issues when, and if they arise.

I therefore recommend the following statement be included as part of the preamble (Article 2) of the Policy, and specifically as an

entirely new sub-article, namely Article 2.3 entitled "Application of Policy":

### **2.3 Application of Policy**

Student complaints of an academic nature, and issues of academic dishonesty and misconduct on the part of students, are addressed through Senate policies and procedures and are under Senate jurisdiction, except to the extent the complaints also include allegations of misconduct involving harassment, discrimination, or workplace violence, any of which may require the application of the Respectful Environment Policy.

- c) *Conflict Resolution Advisors (CRAs) and the Conflict Resolution Committee (CRC) - Articles 3.1, 3.2.1, 3.2.2 and 3.4.3(a) of the Policy*

Following the distribution of the Preliminary Memorandum (Appendix A), and the receipt of further submissions by e-mail from the lawyers for the parties, it became evident that the parties may have different perspectives, if not entirely different understandings of the duties and responsibilities of the CRAs, and the CRC, and of the nature of the relationship between the CRAs and the CRC.

The current Policy sets forth definitions of a CRA, and of the CRC. Those definitions are as follows:

**Conflict Resolution Advisor (CRA):** a person appointed by Brandon University as someone possessing the appropriate training and skills to review and resolve informal complaints related to all human

rights harassment and discrimination, personal harassment, and workplace violence.

**Conflict Resolution Committee (CRC):** a committee formed by the University to support the CRA and this policy.

Article 2.2(f)(i) contains a reference to CRAs. It states:

- f) Brandon University will establish mechanisms to give effect to this policy, including:
  - i. the appointment of two Conflict Resolution Advisors (CRA) whose duties shall include, but not be limited to, the investigation of informal complaints and the provision of advice and assistance to Administrative officers, employees, workers, students, guests and volunteers in connection with concerns and complaints;

Article 3.1 of the Policy sets forth further information with respect to CRAs. It states:

### **3.1 Conflict Resolution Advisor**

The President, on behalf of the University, shall designate two CRA, who, for matters relating to this function, shall report directly to the President. Each CRA shall be selected on the basis of his/her qualifications, counselling expertise and accessibility. Responsibilities of the CRA shall include those as listed in 2.2 f) and shall also include, but not be limited to:

- a) providing a campus education program on human rights discrimination and harassment, personal harassment, and workplace violence, in conjunction with the Conflict Resolution Committee;

- b) advising both complainant and respondent of their rights and of the procedures set out in this Policy;
- c) maintaining confidential records of complaints and issuing an annual report to the President concerning the number, type and disposition of cases, on education and other activities related to the policy;
- d) acting as mediator (where appropriate) between complainant and respondent to facilitate informal resolution; and
- e) making recommendations to the President on cases requiring formal resolution.

The duties and responsibilities of the CRC are set forth in Article 3.2.2 of the Policy, which states:

**3.2.2 The duties of the CRC shall be as follows:**

- a) to prepare a brochure or other appropriate educational material outlining this Policy and procedures at Brandon University, for campus distribution;
- b) to design a campus-wide program of education on human rights harassment and discrimination, personal harassment, and workplace violence;
- c) to provide support to the CRA in interpreting and implementing this Policy, but shall not discuss the identities of those involved or any information that may identify those involved in a specific complaint;
- d) to conduct a review of the policy and of the workload of the CRA and make recommendations to the President every two years.

The University makes three important points in resisting some of the suggestions put forward by BUFA for changes to the Policy with respect to the selection of CRAs, and the relationship between the CRAs, the CRC, and the President. Those points are:

- i) The CRC is not responsible for the work of the CRAs, and the CRC is not given access to the work of the CRAs, much of which is confidential. Supervision by the CRC of the work of the CRAs is not contemplated by the Policy, nor is it practical or in many respects possible;
- ii) The CRC is not primarily a decision making body. Some of its important duties are to educate the university community on the Policy itself, and on the topics covered by the Policy, namely human rights harassment and discrimination, personal harassment, and workplace violence. The University says that BUFA's concerns relating to balancing the membership of the CRC for voting and other purposes is therefore misplaced;
- iii) The CRAs, however selected, report to the President, and their performance must therefore be reviewed and evaluated by the President.

I have carefully reviewed the terms of the current Policy and have considered the above-noted submissions of the University. I agree with the University's submissions. I do not have sufficient evidence to indicate that the Policy is seriously flawed with respect to the

relationship between the CRAs and the CRC, or the way that CRAs are appointed, or the ways in which they function. Therefore, I am not persuaded that fundamental changes are required to the Policy in any of those respects. Nonetheless, I have concluded that many of BUFA's suggestions with respect to the selection and appointment of CRAs are worthwhile and would represent an improvement to the Policy. Article 3.1 of the current Policy is basically sound. However, I recommend that Article 3.1 of the Policy be amended to incorporate the following additional features:

- i) the President, on behalf of the University, shall appoint four CRAs after consulting with and receiving recommendations from the CRC;
- ii) CRAs shall be selected based on their qualifications, experience, and counselling expertise;
- iii) attempting to achieve representation from various departments should be one factor in the selection of CRAs;
- iv) gender should be another factor in the selection of CRAs. Efforts should be made to have two female and two male CRAs;
- v) the performance of the CRAs should be periodically reviewed and evaluated by the President;
- vi) the appointment of CRAs should be for a term of two years, with the possibility of one or more renewals. Any renewals

shall be done by the President after consulting with the CRC.

BUFA has also made various proposals with respect to the CRC.

Firstly, BUFA suggests that Article 3.2.1 be amended to provide that the CRC will choose its own chair, and that the chair not have voting rights, except in the case of a tie.

The University is adamantly opposed to this suggestion. The University says that the CRC is not primarily a decision making body. Its most important functions relate to education, facilitation and motivation, not the exercise of authority. In view of the foregoing, the University argues that it is therefore important that the chair of the CRC be selected on the basis of expertise and an ability to ensure that the CRC properly fulfill its duties as specified in Article 3.2.2 of the Policy. For those reasons, the University submits "... that it is fundamental to the CRC that it be chaired by the Director of Human Resources".

I agree with the University's comments opposing BUFA's proposals relating to Article 3.2.1. Therefore, I am not recommending any changes to Articles 3.2.1 or 3.2.2 of the current Policy.

Secondly, BUFA has made a series of proposals which raise issues with respect to the relationship between the CRC and CRAs.

Article 3.4.3(a), which is under the heading "Formal Resolution of a Complaint" contains a subparagraph which states:

The CRA may also recommend to the President that formal proceedings be initiated, by-passing the informal/mediation process, in the case of a respondent who is alleged to have committed repeated infringements of this Policy, or who is alleged to have committed an offence that, in the judgment of the Administrative Officer or CRA is not amenable to informal resolution.

BUFA proposes that the reference to "Administrative Officer" be deleted. The University is prepared to agree to BUFA's proposal on the understanding that the reference to "Administrative Officer" in Articles 3.4.1(a) and (b) will remain.

I agree with BUFA's proposal to delete the reference to Administrative Officer in the subparagraph in Article 3.4.3 quoted above. I also agree that the references to "Administrative Officer" in Articles 3.4.1(a) and (b) should remain. The change to Article 3.4.3(a) will require a consequential amendment to the first paragraph of Article 3.4.1(b).

It is therefore my recommendation that the reference to Administrative Officer in the above quoted subparagraph in Article 3.4.3(a) be deleted and that the first paragraph of Article 3.4.1(b) be amended to read:

3.4.1(b) If a complaint, oral or written, is brought to an Administrative Officer, he/she shall refer the matter to a CRA. The complainant will be advised that this referral is being made.

BUFA also proposes that the Policy be amended to provide that CRAs base their recommendations that formal proceedings be

initiated and that the informal/mediation process be by-passed, on guidelines drawn up by the CRC. BUFA further proposes that the Policy require the CRAs to inform the CRC of their recommendations. I think BUFA's concern is that CRAs should not be exercising their judgment arbitrarily in these types of cases (i.e. cases involving respondents who have allegedly committed repeated infringements), and that there should be logic, consistency, and transparency in relation to decisions to initiate formal proceedings and to by-pass the mediation process.

The University is opposed to BUFA's suggestions, pointing out that the CRC does not supervise the CRAs, and that the CRC does not receive any factual details relating to individual complaints.

The University is correct that the CRC does not supervise CRAs, and that given the duties of the CRC as outlined in Article 3.2.2 of the Policy, and the specific provisions of Article 3.2.2(c), it would not be practical for the CRC to prepare operating guidelines. It would also not be appropriate for the CRC to receive reports relating to the CRA's decisions, particularly the types of decisions contemplated by that subparagraph in Article 3.4.3(a) of the Policy.

However, the development of guidelines for these types of decisions would be useful in order to ensure that a logical and consistent thought process was being undertaken by all of the CRAs when making such decisions.

I am unaware of how frequently these types of cases arise (I expect that they are rare, given that they involve respondents who have

allegedly committed repeated infringements of the Policy). Depending on the frequency of such cases, and recognizing that if the recommendations in this Award are implemented, there will be four CRAs rather than two, the most practical way of developing such guidelines may be for the CRAs to develop such guidelines themselves, working together as a group.

The CRAs are *ex officio* members of the CRC, and therefore it should be a simple matter to have any guidelines for these types of decisions which the CRAs jointly develop to be presented to the CRC for comments and suggestions for improvements. That could be done without details of individual cases being disclosed to the CRC.

It would not be necessary for any such guidelines to be formally approved by the CRC or any other committee because the CRAs are not the ultimate decision makers in these cases. It is the President who ultimately makes the decision that formal proceedings be initiated, without recourse to the informal/mediation process, based on the recommendations of the CRAs.

In the result, other than the deletion of the reference to "Administrative Officer" in the subparagraph in Article 3.4.3(a) referred to above, I am not making any specific recommendation for any other changes to Article 3.4.3(a). However, if the parties think that including a reference to the CRAs making these decisions pursuant to operating guidelines drawn up by the CRAs as a group would be useful, such an amendment could be prepared and

considered as part of the Process for the change to the Policy described elsewhere in this Award.

d) *Article 3.3 of the Policy*

Article 3.3 of the Policy is entitled "Workplace Violence" and deals with a variety of matters relating to workplace violence, including the prevention and elimination of workplace violence, and the notification of individuals who are at risk of workplace violence. Article 3.3.3 sets forth a complaint process relating to workplace violence. Neither the University nor BUFA made any comments about Article 3.3 of the Policy generally, nor about the complaints process relating to workplace violence set forth in Article 3.3.3 of the Policy. Accordingly, I have assumed that neither party is seeking any amendment to Article 3.3 of the Policy.

e) *Article 3.4.1 of the Policy*

Article 3.4.1 of the Policy provides as follows:

**3.4.1 Complaint Process Relating to Human Rights Discrimination, Human Rights Harassment or Personal Harassment**

- a) Anyone wishing to lodge a complaint of human rights discrimination, human rights harassment or personal harassment under this Policy involving a member of the University community shall contact an Administrative Officer and/or a CRA.

In the case of a student, the Administrative Officer will normally be his/her dean, director or the Dean of Students.

The complainant may choose to consult with an Administrative Officer or the CRA for the purpose of receiving advice and assistance with a view to resolving the situation, prior to lodging a complaint.

- b) If a complaint, oral or written, is brought to an Administrative Officer, he/she will normally refer the matter to a CRA. The complainant will be advised that this referral is being made.

The Administrative Officer must keep a written record of the date, time and nature of any incident that is brought to his/her attention, along with the names of the complainant, the respondent, any witnesses and the steps taken to deal with the situation. This information will be provided to the CRA to assist with the review and resolution of the case and so that data can be included in the annual report.

- c) When a complaint is brought to a CRA by a complainant or Administrative Officer, he/she shall:
  - i. inform the complainant of the policy and procedures; and
  - ii. interview the complainant and advise that person whether there appear to be grounds to proceed within the terms of this policy. Either the CRA or the complainant may decide whether to proceed with the complaint.
  - iii. Provide both the complainant and the respondent with information regarding counseling services that are available and appropriate for the situation.
  - iv. Within five working days from the date on which the complainant notifies the CRA that the complainant wishes to proceed with the complaint, the complainant shall provide the

CRA with a written account of the alleged behaviour.

- v. Within three working days of receipt of the written complaint, the CRA shall:
  - 1) provide the respondent with a copy of the written complaint;
  - 2) inform the respondent of this Policy and procedures; and
  - 3) discuss the nature of the complaint with the respondent.
- vi. Within five working days of receiving a copy of the written complaint, the respondent shall provide the CRA with a written response to the complaint, a copy of which shall be made available to the complainant.

**Note:** These time limits are imposed to ensure expeditious handling of complaints, and may, at the discretion of the CRA, be waived in individual instances.

BUFA is concerned that disgruntled individuals could use the Policy as a weapon and pursue complaints of human rights discrimination, human rights harassment or personal harassment which are frivolous and/or beyond the scope of the Policy. BUFA has proposed that Article 3.4.1(c) of the Policy be amended to provide for a mechanism for determining whether or not the complaint gives rise to a *prima facie* case or is beyond the scope of the Policy. According to BUFA's proposal, if the complaint does not give rise to a *prima facie* case or is beyond the scope of the Policy, the complaint will not proceed.

In the context of the submissions which I received, the parties used the phrase "*prima facie* case" in the same way. That is to say, I think the parties were *ad idem* that if the initial (and as yet unsubstantiated) allegations relating to a complaint are presumed to be true, and they fall within the scope of the Policy, there is a *prima facie* case which is able to proceed pursuant to the Policy. However, if the initial (and as yet unsubstantiated) allegations relating to a complaint are presumed to be true and do not fall within the scope of the Policy, then the threshold to proceed has not been met.

BUFA also wants to ensure that complaints which do not meet the *prima facie* case threshold are disposed of quickly so that the process does not drag on with respect to ill-conceived complaints against its members. BUFA's specific proposal is to amend Article 3.4.1(c)(iv) by adding wording to the existing provisions as outlined below. The bold print represents new wording specifically proposed by BUFA:

(v) Within five working days from the date on which the complainant notifies the CRA that the complainant wishes to proceed with the complaint, the complainant shall provide the CRA with a written account of the alleged behaviour. **The CRA shall decide on the basis of this written complaint whether it falls within the scope of the Policy. If it does not, the complainant shall be so informed and advised that no further action will be taken. If the CRA determines that the complaint falls within the Policy, the following procedures will apply.**

Over the course of the proceedings in Brandon in June, 2009, and in the subsequent e-mail submissions, the University proposed a series of alternate measures to address the problem which BUFA had identified, including:

- i) A proposal whereby during the initial stages of the complaint process, the CRA would advise the complainant whether there appeared to be grounds to proceed with the complaint within the terms of the Policy. However, the University's proposal would still allow the complainant to ultimately decide whether or not to proceed with the complaint. I note that the existing Article 3.4.1(c)(ii) contains such a provision. Therefore, the University's proposal did not represent a major change;
- ii) A deferral of the issue pending a comprehensive review of all proposed amendments to the Policy pursuant to the Process described in a separate subsection of this Award, along with a suggestion that in the interim, the matter could be dealt with by way of further training of CRAs. Such training would include instruction with respect to making preliminary determinations about whether or not a complaint gives rise to a *prima facie* case within the scope of the Policy;
- iii) A proposal to amend Article 3.4.2, (which is entitled "Informal Resolution of a Complaint") to enable a CRA to either dismiss complaints outside the scope of the Policy, or to

recommend to the President of the University that such complaints be dismissed;

- iv) A proposal made in the University's final e-mail submission on August 10, 2009, (which was perhaps intended to override the suggestions outlined in ii) and iii) above) to leave Article 3.4.1(c)(iv) as it presently stands, but to amend Article 3.4.3(a) by adding the following additional paragraph:

The CRA may also recommend to the President that the complaint be dismissed or pursued under a different policy of the University. The President shall determine whether to dismiss, redirect or to pursue the allegation through a formal investigation.

In my opinion, the University's suggestions relating to potential amendments to either Article 3.4.2 or Article 3.4.3 do not adequately address one of BUFA's primary concerns in this area, namely that complaints which do not meet the *prima facie* case threshold should be disposed of quickly, at an early stage of the process. I also think that Article 3.4.2 is the wrong place for a provision of this sort because Article 3.4.2 is essentially a provision which deals with the mediation of a complaint; BUFA's proposal for the dismissal of a complaint that does not meet the threshold of a *prima facie* case does not comfortably fit within a provision otherwise devoted to mediation.

However, the University's concern as stated in their counsel's e-mail of August 10<sup>th</sup>, namely that the complainant should be given a reasonable opportunity to challenge the decision of the CRA with

respect to the validity of the complaint, is a legitimate concern. Indeed, if the Policy does not address that concern, it is unlikely to be well received by other groups affected by the Policy, most notably the Brandon University Students' Union.

I have considered this issue at some length. My recommendation with respect to BUFA's proposal for a mechanism for determining whether or not the complaint gives rise to a *prima facie* case at an early stage of the complaint process is to:

- i) Leave Article 3.4.1(c)(ii) as it presently stands in the Policy.
- ii) Substantially accept BUFA's proposal to amend Article 3.4.1(c)(iv), but to alter the proposed amendment to reflect the University's legitimate concerns relating to providing a complainant with an opportunity to challenge a decision by a CRA to dismiss his or her complaint. My specific recommendation is that Article 3.4.1(c)(iv) be amended to state:

iv) Within five working days from the date on which the complainant notifies the CRA that the complainant wishes to proceed with the complaint, the complainant shall provide the CRA with a written account of the alleged behaviour. The CRA shall decide on the basis of this written complaint whether it falls within the scope of the policy.

If the CRA decides, on the basis of the written complaint, that the complaint falls within the scope of the Policy, the procedures outlined in subsections v) and vi) hereof will apply.

If the CRA decides, on the basis of the written complaint, that the complaint does not fall within the scope of the policy, the complainant shall be so informed in writing within 3 days of the CRA reaching a decision, and provided with brief written reasons for the CRA's decision, and also advised that no further action will be taken in relation to the complaint. Provided however, that in that event, the complainant shall be entitled, within seven days of the receipt of the CRA's decision to request a review of the decision by the President. To conduct the review, the President shall read the written materials relating to the complaint, including the complainant's written account of the alleged behaviour, and the CRA's decision and the reasons for the decision. The President shall not be required to convene a hearing as part of the review. The review shall be completed within fourteen days of the receipt by the President of the complainant's request for a review. Following the review, the President shall decide whether the complaint will be dismissed, or whether it will proceed pursuant to the procedures outlined in subsection (v) and (vi) hereof, or whether it will be re-directed to be dealt with pursuant to some other process.

- iii) Leave Article 3.4.2 as it presently stands in the Policy.

I recognize that the version of Article 3.4.1(c)(iv) which I am recommending is lengthy and arguably cumbersome. The essential change which I am recommending is to provide the CRAs with the authority to make a decision not to pursue a complaint if the CRA involved has concluded that the complaint is not within the scope of the Policy, but to provide the complainant with the right to request a review of that decision by the President, which review must be requested and undertaken expeditiously. If the parties are able to

draft and agree upon a more concise provision, incorporating those elements, I encourage them to do so.

f) *Article 3.4.3(a) of the Policy*

The portion of Article 3.4.3 of the Policy which is problematic is one of the subparagraphs in Article 3.4.3(a), which states:

The President may also, in consultation with the Administrative Officer and/or CRA request that an investigation be conducted in the absence of a formal complaint and in circumstances where he/she deems it appropriate to do so.

BUFA wishes this provision removed, arguing that it gives the President of the University too much power in the absence of any operating guidelines. BUFA asserts that there is no need for the President to initiate an investigation in circumstances in which there is no complaint from another source.

The University responds by arguing that the Policy is a policy of the Board of Governors of Brandon University. In order for the University to properly fulfill its responsibilities under the Policy, the President must have the power to initiate investigations with respect to serious breaches of the Policy, in circumstances in which no individuals have come forward to file a formal complaint. The University also argues that if no such provision is included, the Policy may be seriously defective in terms of fulfilling the University's obligations under provincial legislation, including the *Workplace Safety and Health Act*, and the *Human Rights Code*.

I agree with the University's position. I also note that the President is to consult with an Administrative Officer, or the CRA before requesting such an investigation.

I therefore recommend that the subparagraph in question, which is part of Article 3.4.3(a) of the Policy remain in the Policy in its present form.

g) *Article 3.4.4(c)(v)(5) of the Policy*

Article 3.4.4(c)(v)(5) of the Policy currently states:

- c) Upon an investigation being launched, the investigator shall: ...
  - v. conduct the investigation in accordance with the following guidelines: ...
    - (5) during the investigation process, both the complainant and the respondent are entitled:
      - (a) to be informed of all of the allegations made against them; and
      - (b) the opportunity to make a full answer and defence.

this does not mean that either party is entitled to see or receive copies of the complete statements, except as required by law. Both are entitled, however, to see or receive an adequate summary of the evidence to make a full answer and defence.

BUFA proposes that Article 3.4.4(c)(v)(5) should be amended by deleting the final paragraph. BUFA wants to ensure that members accused of violating the Policy are fully informed of all of the allegations made against them and believes that providing a copy of the complaint and witness statements to respondent members will achieve this objective.

The University disagrees with the proposed deletion and undoubtedly believes that the sub-article in its present form provides adequate procedural protection to respondents by ensuring that they will be informed of all allegations made against them and will have the opportunity to make a full answer and defence. I expect the University is also concerned that providing witness statements in their entirety to respondents may place third party witnesses in awkward positions, and may also reduce the willingness of such witnesses to come forward to provide relevant and helpful information to the investigation.

Given the potential disciplinary consequences and other serious consequences to a respondent of an investigation, I am sympathetic to BUFA's concerns about full disclosure and procedural fairness. The University's concerns are also legitimate.

I think a fair and reasonable balance can be struck which addresses both sets of concerns. Both the respondent and complainant should be entitled to copies of any and all statements provided by the other; but neither should be entitled as of right to see or receive the witness statements which are taken or received by the investigator.

Therefore, I recommend that Article 3.4.4(c)(v)(5) remain as it is in the current Policy, except that the final paragraph be amended. The new Article 3.4.4(c)(v)(5) will therefore read as follows:

**3.4.4 c)** Upon an investigation being launched, the investigator shall: ...

v. conduct the investigation in accordance with the following guidelines: ....

5. during the investigation process, both the complainant and the respondent are entitled:

- a) to be informed of all the allegations made against them; and
- b) to the opportunity to make a full answer and defense.

This does not mean that either party is entitled to see or receive copies of the complete statements of witnesses, except as required by law. However, the complainant shall be entitled to receive copies of any and all statements provided by the respondent, and the respondent shall be entitled to receive copies of any and all statements provided by the complainant.

Both the complainant and the respondent are entitled to receive an adequate summary of all of the evidence, including the information contained in witness statements.

h) *Article 3.4.5(e) of the Policy*

Article 3.4.5(e) of the Policy currently states:

(e) If no further complaint against the respondent is received within four years of the date of resolution, the disciplinary action shall be removed from the file and shall be destroyed.

BUFA proposes that Article 3.4.5(e) be amended by reducing the four year period to a two year period.

The University believes that four years is the appropriate time period.

I have concluded that the time period should be reduced, but to three years, not two.

I therefore recommend that Article 3.4.5(e) be amended to reduce the four year period to a three year period.

The Process for Amendments to the Policy

The University repeatedly emphasized that because the Policy is a policy of the University's, approved by the Board of Governors of the University, it cannot be amended by a simple agreement between senior administrators of the University and BUFA. Any changes to the Policy must be formally approved by the Board of Governors. The Board is unlikely to approve any changes unless there has been a broadly based consultative process with all interested stakeholder groups who will be affected by the Policy, including the other unions with which the University has collective

agreements, and students. In that context, the parties discussed the following process with respect to potential amendments to the Policy:

- i) The CRC shall conduct a thorough review of the Policy and prepare recommendations to the Board of Governors;
- ii) Any of the proposed changes to which BUFA and the University have agreed as outlined herein, and any proposed changes to which BUFA and the University may agree on or before September 30, 2009, and any changes which I have recommended in this Award which BUFA and the University accept, will be presented to the CRC as the joint recommendations of BUFA and the University, along with an appropriate background briefing.

The University has expressed some concern that such a joint recommendation may be "unduly coercive" to the CRC. I do not share that concern. Other sophisticated "stakeholders" are represented on the CRC and I am doubtful that such stakeholders will feel intimidated by a joint recommendation coming from BUFA and the University, or will be inhibited when discussing it. On the other hand, such a joint recommendation should be treated seriously by the CRC.

- iii) The CRC will prepare an initial re-draft of the Policy taking the joint recommendations of BUFA and the University into consideration, and will send that re-draft to each of the stakeholder groups for their comments. The comments from the stakeholder groups will be considered by the CRC and a final draft of the amended Policy will be prepared for submission to the Board of Governors. Subject to

obtaining appropriate legal advice, the CRC's recommendations for amendments to the Policy will be presented "intact" and without amendment to the Board of Governors.

- iv) Any of the stakeholders, including BUFA or the University administration, may make separate submissions to the Board of Governors, on any or all of the proposed amendments to the Policy.
  
- v) The CRC will begin this process as early as practicable in September, 2009. It will meet as required to complete the first draft of the amended Policy on or before October 31, 2009. Stakeholder groups will submit their comments on the final draft of the amended Policy for consideration by the CRC in sufficient time to allow the CRC to submit a final draft of the amended Policy to the Board of Governors for their consideration at the Board's December, 2009 meeting.

As mentioned elsewhere in this Award, BUFA has reservations about the composition of the CRC and wants both the Director of Human Resources and the Learning and Development Officer removed from the list of members of the CRC, although BUFA has no objection one or both of those members serving on the CRC as one or both of the representatives of exempt staff, if the University selects them to do so.

The University is opposed to BUFA's suggestions relating to the composition of the CRC on the same basis as outlined in a previous subsection of this Award. The University repeats that the CRC is not primarily a decision making committee. According to the University, expertise is more important than the representation of potentially competing "political" interests. Therefore, the University

says that the Director of Human Resources and the Learning and Development Officer should be on the CRC.

In my opinion, the current composition of the CRC properly reflects its duties as outlined in the Policy on a go forward basis. It also makes good practical sense to me that the CRC should be the entity conducting the review of the Policy. Therefore, I am not recommending any changes to the composition of the CRC.

I have concluded that the process as described above with respect to the potential amendments to the Policy and the timelines which have been identified are sound. I also note that in addition to any joint recommendations which may be made by BUFA and the University, BUFA will also be able to otherwise participate in the process along with all other stakeholders. Through that participation, BUFA may be able to have the CRC recommend, and the Board of Governors ultimately adopt further changes to the Policy.

Therefore, I recommend that the process for amendments to the Policy, including the amendments to which the parties have agreed and the changes which I am recommending, should be the process as described in this subsection of the Award and more particularly, in subparagraphs i) through v) hereof.

### **3. ADVISORY COMMITTEE**

The submissions made by the parties in Brandon and in their subsequent written submissions were very useful with respect to a Advisory Committee. There was agreement on the important features of an Advisory Committee to the FNAC program.

On the basis of the submissions which I received, the substantial points of agreement between the parties, and my understanding of the past problems in the

FNAC program, I am prepared to issue an order in my capacity as arbitrator. My order is that:

- a) An Advisory Committee to the FNAC program shall be established as promptly as possible;
- b) The Dean of the School of Health Studies, in consultation with the Acting Director of the FNAC program, and some of the interdisciplinary teaching faculty of the FNAC program will formulate the terms of reference for the Advisory Committee, and the type of representative individuals who will serve on the Advisory Committee. The Faculty Council of the School of Health Studies will approve the terms of reference and the general composition of the Advisory Committee. Recruitment of the members of the Advisory Committee will be undertaken as soon as possible and will include representatives from some of the communities which may ultimately employ students enrolled in, or graduates from the FNAC program;
- c) The first meeting of the Advisory Committee shall be held before the end of October, 2009. Minutes of the meetings of the Advisory Committee will be available to anyone on request.

#### 4. JOINT MEETINGS

The submissions made by the parties in Brandon and in their subsequent written submissions were also useful in relation to the topic of Joint Meetings.

On the basis of those submissions, and the substantial points of agreement between the parties, I am prepared to issue an order in my capacity as arbitrator. My order is that:

- a) Informal meetings, for the purpose of monitoring and assessing the state of relations between the Aboriginal community at Brandon University and the larger University community shall occur quarterly. The meetings will be designed to afford an opportunity to the attendees to discuss any issues of concern relating to Aboriginal issues at Brandon University. Those in attendance shall include, but will not necessarily be limited to the President of the University or designate, the President of BUFA (or designate) and an elder associated with either an academic area or with student services. Other members of the University community, including the Director or Acting Director of FNAC may be included on an *ad hoc* basis if they are jointly invited by both the President of BUFA and the President of the University;
- b) The first such Joint Meeting shall occur no later than October 31, 2009.

## 5. FNAC

The submissions made to me by the parties in Brandon and in their subsequent written submissions were particularly useful in providing me with relevant information with respect to the FNAC program. There was substantial agreement between the parties with respect to certain steps which could be promptly undertaken to address some of the current challenges facing the program.

On the basis of the parties' submissions and my understanding of the past problems in the FNAC program, and the current status of the FNAC program, and the substantial points of agreement between the parties, I am ordering that:

- a) A selection committee shall be immediately constituted for the purpose of selecting and hiring two suitable candidates for two academic positions within the FNAC program;
- b) The selection committee shall be chaired by the Dean of the School of Health Studies and will include BUFA members representing Psychiatric Nursing, Native Studies, and Psychology. Andrea Hinch-Bourns, the Acting Director of FNAC, will be invited to be on the selection committee, provided she is not a candidate for one of the two positions;
- c) There will be one advertisement for both positions. The advertisement will be published and distributed as early as possible in October, 2009. There will be a closing date of November 15, 2009, or until the position is filled, for the submission of applications for one of the positions, with a commencement date for that position of January 1, 2010, or subject to availability. There will be a closing date of May 1, 2010, or until the position is filled, for the submission of applications for the other position, with a commencement date for that position of July 1, 2010, or subject to availability;
- d) The Co-ordinator of the FNAC program will be selected as soon as reasonably practicable after the two academic positions have been filled. Until that time, Co-ordinator/Director positions shall continue

to be filled on an acting basis. Selection of the Co-ordinator shall follow the process in Article 25.4 of the Collective Agreement. The removal of the Co-ordinator shall also follow the process in Article 25.4 of the Collective Agreement.

## **6. THE CEREMONY ROOM**

The parties encouraged me to view the Ceremony Room (Room 141 in the Health Studies Building). They generously made arrangements whereby I was able to do so. The Ceremony Room is both unique and beautiful. Initially I was struck by the simplicity of its design, but after spending a few minutes in the Ceremony Room, I recognized that it was also powerfully evocative.

Unfortunately, this remarkable space has been a flashpoint for controversy at times in the relatively recent past. Issues relating to the Ceremony Room and its use were extensively referred to in the report of Dr. Shirley Katz dated July 24, 2007. I will not repeat the particulars relating to the issues surrounding the use of the Ceremony Room outlined in Dr. Katz's report because the parties are very familiar with them, and because the parties (to their credit) are much more interested in developing a framework for the appropriate use of the Ceremony Room in the future, rather than dwelling on past difficulties.

The parties have already made significant progress towards a revised protocol for the use of the Ceremony Room. In the Preliminary Memorandum, I set forth my recommendations for a revised protocol. BUFA found those recommendations generally acceptable, including the recommendations for allocating space in the Ceremony Room according to certain priorities in future academic years. However, BUFA correctly pointed out that it should be made clear that the same priorities should

apply with respect to allocating space in the Ceremony Room for the upcoming academic year (2009/2010).

The University raised two general issues and some points of finer detail.

The two general issues related to:

- i) Format - the University stated that because the revised protocol will be a policy of the Board of Governors of the University, it should follow, to the extent reasonably possible, the format of the previous policy while incorporating certain new principles. I agree.
- ii) Factual inaccuracies - the University stated that some of the statements in the "recommended revised protocol do not accurately reflect the facts". I assume the University is referring to certain statements in the opening paragraph relating to the objectives of the design of the Ceremony Room. It is my understanding that BUFA believes that those statements are factually accurate.

The University's objective is to ensure that statements in a policy of the Board of Governors are accurate. BUFA's objective is to include a sentence or two at the beginning of the revised protocol which will provide an accurate and balanced context for the substantive provisions which follow.

Those objectives of the parties should be reconcilable, but in my opinion the opening paragraph proposed by the University does not adequately address BUFA's legitimate desire for an accurate and balanced context.

However, the opening paragraph of the revised protocol is less important than the principles and practices relating to the usage of the Ceremony Room as outlined in points 1 to 8 of the revised protocol.

I have carefully considered all of the comments which I have received on this issue from the parties, including their specific comments on the revised protocol as set forth in the Preliminary Memorandum.

I have attempted to reflect all of their comments in a further revised protocol.

The use of the Ceremony Room is arguably a contentious issue in both of the policy grievances which I have been appointed to determine. A revised protocol was recommended by Dr. Katz in July of 2007, more than two years ago. It is in the best interests of both parties that a revised protocol be put in place as quickly as possible.

Therefore, based on all of the foregoing and on the substantial points of agreement between the parties as to a revised protocol, I am ordering that, as soon as reasonably possible, the University shall adopt an amended policy with respect to the use of Room 141 of the Health Studies Building, otherwise known as the Ceremony Room, and that the form and content of the amended policy be as follows:

**Revised Protocol for the Use of the Ceremony Room**

**Room 141 Health Studies Complex**

The Ceremony Room (Room 141 in the Health Studies Complex) was designed to provide for the teaching needs of certain courses within the First Nations and Aboriginal Counselling (FNAC) Program and for the holding of ceremonies important to the FNAC Program and other Aboriginal groups at the University. The room is also a shared space that serves multiple purposes in the context of a public university and its functions. It is appropriate that this room is utilized for teaching, ceremonial and non-ceremonial purposes, and in that context all parties bring a spirit of flexibility,

respect and mutual accommodation to the use of the space, and that they recognize the significance of the space to many members of the Aboriginal communities within the University. The usage of the room shall be guided by the principles and practices outlined below.

1. The room may be used as a teaching space. When classroom bookings take place, preference shall be given to First Nations and Aboriginal Counselling (FNAC) teaching requirements while considering effective use of space and other appropriate alternatives available for teaching.
2. The room may be used for ceremonies by the FNAC Program and by other groups. Any requirements of user groups will be provided by those groups and either removed or managed to not impact subsequent users. The fire pit shall remain covered at all times when it is not in use with an appropriate cover that minimizes the chance that anyone will step on the pit or cover while ensuring the health and safety of occupants of the room.
3. The room may be used for meetings and events by programs within the building, by the broader campus community and by appropriate outside parties, as approved and booked by the Dean of Health Studies. Any setup required for a meeting or event is the responsibility of the intended user and the room must be returned to a standard setup, as determined by the Dean, at the close of the meeting or event. A standard setup will include arranging the chairs in the form of a circle.
4. a) Booking of the room is done through the office of the Dean of Health Studies. The first priority for the use of the room will be the teaching and academic activities undertaken by the FNAC Program. The second priority for the use of the room will be ceremonial purposes as undertaken by the FNAC Program, or other Aboriginal groups or organizations within Brandon University. The third priority for the use of the room will be teaching and other academic activities undertaken by other segments of the Brandon University community. The fourth priority for the use of the room will be other activities organized or undertaken by the Brandon University community, including non-teaching and non-ceremonial activities organized or undertaken by FNAC. The final priority for the use of the room will be activities organized, undertaken or sponsored by appropriate outside groups. The University Space Allocation on Campus Policy (<http://www.brandonu.ca/admin/policies/Administrative/Space%20Allocation%20Policy%20rev%20may%2015%202002.pdf>) as varied by this protocol, shall generally guide this determination. Specific or unusual time requirements shall be indicated at the time of booking to allow, if possible, for the

accommodation of those requirements. Any requirements of user groups will be provided by those groups, and if necessary, will be either modified or managed in such a way so as to not adversely impact subsequent users.

- b) Requests to book the room for the next academic year shall be made by March 1 (i.e. not less than 6 months preceding the commencement of the academic year). These requests will be processed in accordance with the priorities outlined in paragraph 4 a). After March 1, if a request for room booking is received which conflicts with a booking already confirmed, but the request has a higher priority than the confirmed booking (pursuit to paragraph 4 a), the parties wishing to use the room will attempt to reach a mutual agreement. If the parties are unable to agree, then the Dean of Health Studies shall resolve the issue on the basis of the availability of reasonable alternative space.
  - c) Requests to book the room for the 2009/2010 academic year shall be done through the office of the Dean of Health Studies in accordance with the priorities contained in this Protocol.
5. The space occupied by the Ceremony Room on the main floor, and the George and Mary Gooden Art Gallery on the second floor, shall be considered a single space and booked on that basis to avoid conflicting uses.
  6. It is recognized that Aboriginal drumming and singing constitute standard ceremonial and pedagogical practices. FNAC Faculty and Elders will be alerted, whenever possible, as to the times when mid-term exams or other activities reasonably believed to be sensitive to the sound of drumming and singing will be scheduled in the Health Studies Complex so that impacts may be minimized on those programs during those times.
  7. Reasonable steps shall be taken to ensure that no alcohol will be served or consumed in the room at any time.
  8. The University shall undertake a process to have an Aboriginal name selected for the room by January 31, 2010.

### **Protocol for the Use of the Fire Pit**

1. The fire pit shall be protected from traffic at all times. It shall remain covered when not in use. The cover shall be appropriate to protect against traffic while ensuring the health and safety of occupants to the room.
2. The fire pit is only to be used with the guidance of an Elder and by people appropriately trained in the use of the equipment and following this protocol. Any supplies required must be sourced by the users according to their needs and funded from the user's budget.
3. Fires must be small to moderate in size and not fed one-half hour before the end of a session.
4. Only medicine can be offered to the fire. Food offerings are to be placed on the land.
5. The fire must remain attended until the embers have died down.
6. The cover must be replaced over the fire pit on the following day of a fire or as soon as the embers are completely out and cool.
7. A metal container, approved by Physical Plant, shall be used to store wood for the fire pit.
8. A metal container, approved by Physical Plant, shall be used for hot coals and to haul ashes from the fire pit.

If the parties are able to reach agreement on an alternate opening paragraph within ten days of the receipt of this Award, my order can be varied to use that alternate opening paragraph. However, failing any such agreement, my order as articulated herein will apply.

### **7. EDUCATION**

This topic relates to educating the Brandon University community about living and working with Aboriginal colleagues and students. Both parties understand the importance of this educational initiative and recognize that in order for it to be effective,

the initiative must be multifaceted and offered regularly and repeatedly to faculty, support staff and students.

The parties have agreed, and I hereby order, that the University shall promptly undertake educational initiatives which will feature the following elements:

- a) All new employees will be given two sessions as part of the new employee orientation each August.

The first, done by a Brandon University Aboriginal faculty member will be a presentation which will provide new faculty members with perspectives on how to teach and work effectively with First Nations and Aboriginal students and colleagues.

The second, which will be presented by the Director of Human Resources, will provide all new employees with information, and an opportunity to discuss the Respectful Environment Policy, the definitions thereunder, and the processes contemplated by the Policy, and will also provide all new employees with information and an opportunity to discuss expectations regarding human rights discrimination and harassment, personal harassment and workplace violence.

- b) Members of the general University community, including faculty, support staff and students, will be invited to attend semi-annual sessions on how to teach and work effectively with Aboriginal students and colleagues. Specific topics may include cross-cultural awareness, Aboriginal traditions and cultural practices, Human Rights principles, and anti-discrimination practices, stress in the

workplace, and Respectful Environment Policies. These sessions will be not less than 60 minutes in length, and will be held each October and February, beginning in October, 2009. They will be offered two times in one week, either on two consecutive work days, or on alternate work days, to enable as many people as possible from the University community to attend. Facilitators may include:

- i) faculty or instructional associates from Brandon University, or other universities that have extensive experience in Aboriginal post-secondary education;
- ii) Elders with relevant experience; or
- iii) any other outside facilitator with appropriate qualifications and experience.

Notice of these events will be distributed widely in order to encourage attendance from all segments of the Brandon University community. Attendance will be encouraged, but will not be mandatory.

- c) In addition to the foregoing, within the School of Health Studies, the acting Director of FNAC, or the Co-ordinator, as the case may be, will be asked to continue to lead sessions periodically with senior practicum students on the importance of being knowledgeable about Aboriginal cultures when working with Aboriginal individuals, or their communities.

- d) Members of the general University community, including faculty, support staff and students, will be invited to attend semi-annual sessions on Human Rights principles, and the Respectful Environment Policy, as it presently exists, and as it undergoes change, in the October/November, and February/March time periods in each year, starting in October/November, 2009. The sessions shall be conducted or facilitated by the Learning and Development Officer.
  
- e) The University and BUFA will attempt to agree on a process whereby the above-noted programs and initiatives will be reviewed to assess their effectiveness and whereby some or all of the programs and initiatives will be changed if necessary to improve their effectiveness, or ultimately discontinued if they remain ineffective, or if they are no longer required.

### **DECISION AND ORDERS**

The grievances are allowed in part.

At the invitation of the parties, I will exercise my remedial authority pursuant to Section 121 of the *Labour Relations Act* with regard to the real substance of the matters in dispute.

With reference to the first of the seven categories of issues defined in this Award, I have decided not to grant the declaratory relief sought by the Union.

With respect to the Respectful Environment Policy, I have not granted any orders or other type of arbitral relief. However, I have noted the issues on which the

parties have reached agreement, and I have outlined a series of recommendations for changes to the Respectful Environment Policy which I urge the parties to seriously consider, and if possible to accept. The changes to which the parties have agreed, and the changes which I have recommended which are accepted by the parties, should be presented to the CRC as joint recommendations of BUFA and the University, along with an appropriate background briefing, as part of the "Process for Amendments to the Policy" outlined in this Award.

With respect to the remaining categories of issues, I am granting the orders outlined below requiring the University to take the actions specified in each category, pursuant to the grievance provisions in the Collective Agreement between the parties, and Part VII of the *Labour Relations Act*.

#### **Advisory Committee**

An order is hereby granted that:

- a) An Advisory Committee to the FNAC program shall be established as promptly as possible;
- b) The Dean of the School of Health Studies, in consultation with the Acting Director of the FNAC program, and some of the interdisciplinary teaching faculty of the FNAC program will formulate the terms of reference for the Advisory Committee, and the type of representative individuals who will serve on the Advisory Committee. The Faculty Council of the School of Health Studies will approve the terms of reference and the general composition of the Advisory Committee. Recruitment of the members of the Advisory Committee will be undertaken as soon as possible and will include representatives from some of the communities which may ultimately employ students enrolled in, or graduates from the FNAC program;
- c) The first meeting of the Advisory Committee shall be held before the end of October, 2009. Minutes of the meetings of the Advisory Committee will be available to anyone on request.

### **Joint Meetings**

An order is hereby granted that:

- a) Informal meetings, for the purpose of monitoring and assessing the state of relations between the Aboriginal community at Brandon University and the larger University community shall occur quarterly. The meetings will be designed to afford an opportunity to the attendees to discuss any issues of concern relating to Aboriginal issues at Brandon University. Those in attendance shall include, but will not necessarily be limited to the President of the University or designate, the President of BUFA (or designate) and an elder associated with either an academic area or with student services. Other members of the University community, including the Director or Acting Director of FNAC may be included on an *ad hoc* basis if they are jointly invited by both the President of BUFA and the President of the University;
- b) The first such Joint Meeting shall occur no later than October 31, 2009.

### **FNAC**

An Order is hereby granted that:

- a) A selection committee shall be immediately constituted for the purpose of selecting and hiring two suitable candidates for two academic positions within the FNAC program;
- b) The selection committee shall be chaired by the Dean of the School of Health Studies and will include BUFA members representing Psychiatric Nursing, Native Studies, and Psychology. Andrea Hinch-Bourne, the Acting Director of FNAC, will be invited to be on the selection committee, provided she is not a candidate for one of the two positions;
- c) There will be one advertisement for both positions. The advertisement will be published and distributed as early as possible in October, 2009. There will be a closing date of November 15, 2009, or until the position is filled, for the submission of applications for one of the positions, with a commencement date for that position of January 1, 2010, or subject to availability. There will be a closing date of May 1, 2010, or until the position is filled, for the

submission of applications for the other position, with a commencement date for that position of July 1, 2010, or subject to availability;

- d) The Co-ordinator of the FNAC program will be selected as soon as reasonably practicable after the two academic positions have been filled. Until that time, Co-ordinator/Director positions shall continue to be filled on an acting basis. Selection of the Co-ordinator shall follow the process in Article 25.4 of the Collective Agreement. The removal of the Co-ordinator shall also follow the process in Article 25.4 of the Collective Agreement.

### **The Ceremony Room**

An order is hereby granted that, as soon as reasonably possible, the University shall adopt an amended policy with respect to the use of Room 141 of the Health Studies Building, otherwise known as the Ceremony Room, and that the form and content of the amended policy shall be as more particularly outlined on pages 42 to 45 of this Award.

### **Education**

An Order is hereby granted that the University shall promptly undertake educational initiatives which will feature the following elements:

- a) All new employees will be given two sessions as part of the new employee orientation each August.

The first, done by a Brandon University Aboriginal faculty member will be a presentation which will provide new faculty members with perspectives on how to teach and work effectively with First Nations and Aboriginal students and colleagues.

The second, which will be presented by the Director of Human Resources, will provide all new employees with information, and an opportunity to discuss the Respectful Environment Policy, the definitions thereunder, and the processes contemplated by the Policy, and will also provide all new employees with information and an opportunity to discuss expectations regarding human rights discrimination and harassment, personal harassment and workplace violence;

- b) Members of the general University community, including faculty, support staff and students, will be invited to attend semi-annual sessions on how to teach and work effectively with Aboriginal students and colleagues. Specific topics may include cross-cultural awareness, Aboriginal traditions and cultural practices, Human Rights principles, and anti-discrimination practices, stress in the workplace, and Respectful Environment Policies. These sessions will be not less than 60 minutes in length, and will be held each October and February, beginning in October, 2009. They will be offered two times in one week, either on two consecutive work days, or on alternate work days, to enable as many people as possible from the University community to attend. Facilitators may include:
- i) faculty or instructional associates from Brandon University, or other universities that have extensive experience in Aboriginal post-secondary education;
  - ii) Elders with relevant experience; or
  - iii) any other outside facilitator with appropriate qualifications and experience.


Notice of these events will be distributed widely in order to encourage attendance from all segments of the Brandon University community. Attendance will be encouraged, but will not be mandatory;

- c) In addition to the foregoing, within the School of Health Studies, the acting Director of FNAC, or the Co-ordinator, as the case may be, will be asked to continue to lead sessions periodically with senior practicum students on the importance of being knowledgeable about Aboriginal cultures when working with Aboriginal individuals, or their communities;
- d) Members of the general University community, including faculty, support staff and students, will be invited to attend semi-annual sessions on Human Rights principles, and the Respectful Environment Policy, as it presently exists, and as it undergoes change, in the October/November, and February/March time periods in each year, starting in October/November, 2009. The sessions shall be conducted or facilitated by the Learning and Development Officer;

- e) The University and BUFA will attempt to agree on a process whereby the above-noted programs and initiatives will be reviewed to assess their effectiveness, and whereby some or all of the programs and initiatives will be changed if necessary to improve their effectiveness, or ultimately discontinued if they remain ineffective, or if they are no longer required.

I hereby retain jurisdiction to deal with any other issue which may arise with respect to the implementation of this Award.

DATED this 2<sup>nd</sup> day of September, 2009.

  
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Blair Graham